



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2022 LEGISLATURE**

**Response to HRS 353C-8/Act 194, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

December 2021

Act 194, Sessions Law of Hawaii 2010 SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Session Laws of Hawaii 2010, requires the Department of Public Safety (PSD) to report to the Legislature the statistical information related to the number of sexual assaults that occurred while a person is in the custody of PSD. The Prison Rape Elimination Act's (PREA) definition of sexual abuse and sexual harassment will be adopted for this report. Accordingly, the data reported under paragraphs I - V is from the calendar year 2020.

I. Sexual assaults (sexual abuse) by persons in custody against other persons in the custody of PSD.

In 2020, there were fifty-three (53) reported incidents of offender-on-offender sexual abuse. PSD is responsible for conducting the administrative investigation for all PREA sexual abuse incidents and PSD refers all reported PREA sexual abuse incidents to County law enforcement to process the parallel criminal investigation. PSD's administrative investigation process substantiated two (2) of the reported incidents made by offender victims, which resulted in administrative disciplinary action for the perpetrator of the sexual abuse. PSD's administrative investigation process determined that forty-eight (48) reported incidents were either unfounded or unsubstantiated. There are three (3) incidents still pending the administrative investigation process.

II. Sexual assaults (sexual abuse) by correctional staff against persons in custody of the PSD.

In 2020, there were thirty-nine (39) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that four (4) reported incidents were substantiated. Four (4) staff perpetrators were either terminated or submitted their resignations with stipulations. Thirty-two (32) of the thirty-nine (39) reported incidents were deemed either unsubstantiated or unfounded, and the remaining three (3) reported incidents are still pending the administrative investigation process. All reported incidents of sexual abuse by staff, contractors, or volunteers were also reported to County law enforcement authorities to process the criminal investigation component, if warranted.

III. Non-criminal sexual misconduct by staff, including sexual harassment of persons in custody of PSD.

In 2020, there were Seven (7) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that one (1) reported incident were substantiated. Six (6) reported incidents were deemed either unsubstantiated or unfounded, and no open or pending incident in the administrative investigation process.

IV. Criminal cases initiated and closed for sexual assaults (sexual abuse) by or upon a person in custody of PSD.

In 2020, there were six (6) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. Six (6) criminal cases were closed with no further action for sexual assault/abuse.

V. Civil Claims filed and closed for sexual assaults by or upon a person in custody of PSD.

In 2020, there were no new civil lawsuit filed, related to allegations of sexual harassment and/or sexual abuse on behalf of the offender victim.

VI. PREA UPDATE

Act 194 also requires the Department of Public Safety (PSD) to report to the Legislature on its efforts to implement the Prison Rape Elimination Act of 2003 (PREA) in state correctional institutions. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and prosecuting violators.

The final PREA National Standards were signed by U.S. Attorney General on May 16, 2012, published in the Federal Register on June 20, 2012, and became effective August 2012. All State, County and private prisons, jails, lockups, juvenile facilities, and community confinement facilities (halfway houses, re-entry centers, and day reporting centers) were required to comply with these standards by August of 2013 and are subject to independent audits conducted by Department of Justice (DOJ) Certified PREA Auditors.

The audits are conducted on a three-year cycle which began in August of 2013, with one-third of PSD's facilities audited each year. The Departments onsite DOJ PREA Audits in the first year of the third cycle were held at Halawa Correctional Facility (HCF) and Waiawa Correctional Facility (WCF) in September 2019. The Women's Community Correctional Center was rescheduled from September 2019 to January 2020, due to personal reasons by the Auditor. The final audit reports were submitted in February 2020 (HCF), April 2020 (WCF) and September 2020 (WCCC).

PSD recently completed the second (August 2020 – August 2021) year of the third cycle with audits conducted at Kauai Community Correctional Center (KCCC) and Maui Community Correctional Center (MCCC). The initial onsite portion of the DOJ PREA audits for KCCC and MCCC were initially scheduled for November 2020, however the Auditor based on the Western State Consortium for circular auditing was required to postpone due to COVID-19 travel restrictions. The onsite DOJ PREA audits were rescheduled, and were completed in April 2021. KCCC and MCCC

received an interim report in June 2021, and after some corrective action, received a final PREA audit report in November 2021 that deemed them to be in full compliance with the National PREA Standards.

Currently PSD is in the third (August 2021 – August 2022) year of the third audit cycle with Hawaii Community Correctional Center (HCCC), Kulani Correctional Facility (KCF) and Oahu Community Correctional Center (OCCC) scheduled to be audited by a certified DOJ PREA Auditor in December 2021 and January 2022.

All PSD facilities including contracted facilities, such as Core Civic – Saguaro Correctional Center and the Hawaii Federal Detention Center have already gone through 2 cycles of PREA audits and is currently in the third cycle. All PSD and contracted facilities were audited by DOJ PREA Certified Auditors and have been certified as compliant with the National PREA Standards.

In 2013 PSD entered into a Memorandum of Agreement (MOA) with several Western States to conduct (WSC) “circular auditing”. The goal of the MOA is to minimize audit costs by sharing state staff resources among the MOA member States and counties, on a rotational basis to conduct the mandated PREA audits as defined by the DOJ PREA Standards.

The MOA requires that PSD have DOJ Certified PREA Auditors on staff. As a result, PSD sent seven (7) qualified staff members to the Certified DOJ PREA Auditor Training. PSD currently has three (3) Certified DOJ PREA Auditors due to retirement, employment changes, or personal reasons. Due to new requirements by DOJ and the PREA Resource Center, newly certified PREA auditors must participate in a field training Program (FTP) conducted by DOJ and the PREA Resource Center (PRC). Once the individual successfully completes FTP, then the individual is subject to a probational review until completing two (2) audits as the lead auditor. This new process has extended the certification process to about a year and a half. PSD referred three current employees for upcoming DOJ PREA Auditor Certification class; however due to the limited slots, PSD’s employees were not accepted to the November 2020 PREA Auditor Certification class, which was altered due to the COVID 19 pandemic.

In October of 2021, Governor David Y. Ige informed the DOJ that the State of Hawaii was certified and in full compliance with the National PREA Standards for Audit year two (2) of cycle three (3). The notification of certification allowed the Executive Branch to avoid forfeiting five percent of Federal grant funds dedicated to prisons, jails, lockups, and juvenile detention facilities. PREA impacts PSD in its Corrections and Law Enforcement Divisions.

PSD began its initial efforts to comply with the finalized PREA standards in August of 2012. As a result, PSD began implementing policies and

procedures, training employees, contractors, volunteers, and educating offenders.

PSD supports all efforts to detect, prevent, report, investigate, offer victim support services, and prosecute criminally and/or administratively perpetrators of sexual abuse/assault and sexual harassment in its prison system, jails, and lockups. PSD is committed to providing a safe environment for all offenders committed to the custody and supervision of its Director.

PSD continues its efforts to maintain compliance with the PREA standards. Some of these efforts include, but are not limited to updating policies, requesting community rape crisis centers to provide emotional counseling support services for offenders, updating PREA training with current information and materials, as well as appointing PREA Compliance Managers (PCM) in each facility. Under the guidance of the PSD's PREA Coordinator, PCM's direct their facility's efforts to comply with the policies and directives that promote the PREA standards.

PSD has continued to provide comprehensive training and PREA updates during pandemic-related restrictions for all PSD staff emphasizing PSD's zero tolerance policy and the importance of preventing, detecting, deterring, and encouraging the reporting of sexual abuse/sexual assault and sexual harassment toward offenders. PSD also educated staff about the serious impact of offender sexual victimization within a correctional setting. Staff members are provided with refresher PREA training every two (2) years to ensure that they are aware of PSD's PREA policies and goals. In years when a staff member does not receive the refresher training, they are provided with updated information on current sexual abuse and sexual harassment policies and any relevant updates or changes through handouts, memoranda, and posters. The PREA posters on general assistance and reporting information for inmates, staff and the public has been updated to include a new medical and mental health informational poster. All informational posters and brochures have been distributed to all facilities and posted to include the departments website. PSD volunteers and contractors, who have contact with offenders, are trained on PREA through the department's Volin-Cor program that is part of the Correctional Program Services Section. They are trained in PREA and PSD's Zero-Tolerance policy, and their responsibilities regarding prevention, detection, reporting, and how to respond to an offender victim of sexual abuse and sexual harassment. The training is conducted prior to having contact with the inmate population. Included in their PREA training is, Code of Ethics, Confidentiality and Mandatory Reporting requirements, safety, security procedures, protocols, and dress code. The training for Volin-Cor Program participants is held annually to include background checks.

Offenders receive verbal and written information about PSD's zero tolerance policy and how to report incidents or suspected incidents of sexual abuse or sexual harassment, and continues to provide comprehensive PREA education for inmates, detainees, and residents through video and updated PREA brochures and postings, during the pandemic-related restrictions.

PSD's budget, programs, and resources are significantly impacted by required PREA audits, training, and education; therefore, PSD respectfully asks the Legislature's favorable consideration of PREA-impacted budgetary requests as they benefit all offenders, staff, contractors, volunteers, and the community at large.